detention order. Thirdly, the well-known *Kesavananda*[10] doctrine enunciated by the Supreme Court of India, which would have implied a limitation on the legislative powers of Parliament under art 58 to legislate or under art 5 to amend if the legislation or amendment would alter the basic structure of the Constitution, is not the law in Singapore. Fourthly, in any case, the January 1989 constitutional amendments did not in any way alter the basic structure of the Constitution. The motion is accordingly dismissed with costs.

Application dismissed.

Solicitors: *Seong Tang & Partners; Low Yeap & Co.*

Reported by *Kevin Tan Yew Lee*

Wong Kok Chin v Singapore Society of Accountants

HIGH COURT (SINGAPORE) — DISTRICT COURT APPEAL NO 3 OF 1988
YONG PUNG HOW J
7 DECEMBER 1989

Professions — Disciplinary proceedings — Standard of proof for disciplinary proceedings — Duty of disciplinary committee — Charges concerning 'grave impropriety', 'gross neglect', and 'discreditable act' — Accountants Act (Cap 212, 1970 Ed), s 34(1)(b), (7) & 35(2) — Accountants Act (Cap 2, 1985 Ed), ss 21 & 33 — Accountants Act 1987, s 21 — Companies Act (Cap 50, 1985 Ed), s 207

Administrative Law — Disciplinary tribunals — Natural justice — Charges against accountant — Charge relating to knowledge of accused — Defective as no date specified — Whether tribunal entitled to conduct inquiry by examining witnesses

Companies and Corporations — Auditor — When appointed as such — Duties of auditor — Conflict of interest in acting as financial consultant for audited client — Share allotted for cash — Whether cash actually had to be paid — Standard of conduct expected from auditor — Importance of professional standards — Hindsight not to be considered in assessing conduct

Words and phrases — 'Grave impropriety' — Accountants Act (Cap 212, 1970 Ed), s 34(1)(b)

Words and Phrases — 'Gross neglect' — Accountants Act (Cap 212, 1970 Ed), s 34(1)(b)

Words and Phrases — 'Discreditable act' — Accountants Act (Cap 212, 1970 Ed), s 34(1)(b)

The appellant is a public accountant registered under the provisions of the Accountants Acts. He was practising in partnership under the firm name of Wong & Teo, David Teo and Associates ('the firm'). The firm had two other partners. Although a resolution had been recorded for the first directors' meeting of Broadview Commodities, appointing the firm as the auditors of the company, nothing more appears to have been done to confirm or activate this relationship until the accounts of Broadview Commodities for the first year of operations were completed in 1982. In August 1982, the firm accepted the appointment as auditors by a letter dated 23 August 1982 and then carried out the first annual audit of Broadview Commodities. Government authorities investigated Broadview Commodities, and the investigations resulted in prosecutions against two Broadview Commodities officers. Arising out of the investigations of Broadview Commodities, a letter of complaint was sent by the Commercial Crime Division of the Criminal Investigation Department to the Singapore Society of Accountants ('the society'). It summarized the investigations into Broadview Commodities and referred to what it described as the 'deep involvement' of the appellant with Broadview Commodities. It finally expressed the view that in his involvement, he 'had failed to take reasonable care and skill', and 'could not have maintained a position of independence required of an auditor in order to be objective in forming and expressing his opinion on the accounts of Broadview Commodities'. The complaint was laid before the society's investigation committee, which in turn referred it to the disciplinary committee, which then held an inquiry.

Before the disciplinary committee ('the committee'), the appellant faced seven charges under s 34(1)(b) of the Accountants Act (Cap 212, 1970 Ed) (later renumbered s 33(1)(b) of the Accountants Act (Cap 2, 1985 Ed)) ('the Act'), all of which were alleged to amount to 'grave impropriety', 'gross neglect', and 'an act discreditable to an accountant'. On two charges, he was ordered to be removed from the Register of Accountants; on three charges, he was suspended for a period of one, three and five years respectively while no order was made as regards two charges. The suspensions imposed were to run concurrently. The appellant appealed to the High Court against these orders of the committee.

Held, allowing the appellant's appeal on all the charges:

(1) The terms 'grave impropriety', 'gross neglect', and 'discreditable act' are not defined in the Act and there has also been no judicial interpretation of these terms. Neither has the society issued for the benefit of its members any rules or guidelines as to what acts of default or misconduct would be considered by the society to fall within the scope of this section. The court must therefore determine for itself what acts or omissions amounted to professional misconduct which fell within the range of offences set out in the section, and whether, on a review of the evidence, the appellant was guilty of any of them. An act or default which was discreditable to an accountant need not necessarily have arisen out of his professional work as an accountant, but it should nevertheless have been an act which would have brought discredit on him as an accountant or on the profession as a whole.

(2) A practical test could have been if reasonable people, on hearing about what he had done, would have said without hesitation that as an accountant he should not have done it. The court was of the opinion that a member of the society would have been guilty of gross neglect in the performance of his professional duties if, having regard to all the surrounding circumstances at the time, he did not exercise the skill and care that a reasonable client would have been entitled to expect of him.

(3) For any member of the society to be guilty of grave impropriety in a professional respect under s 34, there must have been the same element of moral turpitude in the misconduct complained of, to the extent that it would have been regarded without hesitation by other accountants as being so disgraceful

that his continued membership of the profession would immediately be called into question.

(4) In view of the seriousness of the allegation, the committee carrying out the inquiry would have to apply a high standard of proof and not arrive at a finding of guilt merely on a balance of probabilities.

(5) As for the first charge, it is clear that, at the time in late April and early May 1981, when the appellant made his visit to Hong Kong, and his firm sent the letter dated 30 April 1981 to the Gold Exchange of Singapore ('GES'), neither the appellant nor his firm could be regarded as being the auditors of Broadview Commodities.

(6) The appointment as auditors of Broadview Commodities and the contractual relationship as auditor with the company did not arise from the resolution at the first directors' meeting of Broadview Commodities. That was to come later in 1982 when the first accounts of Broadview Commodities were made available for audit. The firm merely had a limited assignment to certify as accountants to the GES that Broadview Commodities, which had only just been formed, had the paid-up capital of $2m in connection with its application for membership of the GES. For this limited assignment, s 207 of the Companies Act (Cap 50, 1985 Ed), referred to by the committee, had nothing to do with the matter.

(7) Even if the court was wrong in finding that neither the appellant nor his firm had accepted appointment as auditors, his culpability or otherwise must be looked at objectively, taking the situation and circumstances as they were. It has to be borne in mind that at the time, these clients were a group of people to whom the appellant had been introduced for business.

(8) At the request of his partner, the appellant had taken the trouble to go to Hong Kong from the Philippines to check on the existence and authenticity of the margin deposits. There was no reason then to go behind the margin receipts. In the court's judgment, without the benefit of hindsight and the better knowledge that would have come with it, it would not have been unreasonable for an accountant to act in the way that the appellant did in Hong Kong. The committee's finding on the first charge of gross neglect in the performance of professional duties was perverse and the finding must be set aside.

(9) Shares are allotted for cash, not only when they are paid for by legal tender or by cheque or by negotiable instrument on which the company may sue, but also when the company is indebted to shareholders and they agree that the debt shall be discharged by crediting shares which are paid up by an equivalent amount.

(10) In this case, when the firm was asked to confirm that the $2m had been paid up, it was entitled, on the invitation of the shareholders, to look at the evidence of the margin receipts, and the goods supplied and services rendered to Broadview Commodities, to satisfy itself prima facie that there was this consideration. There being nothing suspicious at the time, the firm was not required to go behind the margin receipts and the debts due to the allottee of the shares. The correct inference to draw from the evidence on this aspect is that both letters to the GES were not released until confirmation had been received from the appellant in Hong Kong.

(11) The committee stated in its grounds of decision that in respect of this charge 'we find the defendant's conduct highly suspect'. Conduct which is highly suspect is not a basis for finding a man guilty under our legal system. Nor is it justifiable, in the case of a professional man, to use it as a basis to order that his livelihood be terminated. Accordingly, the committee's finding of guilt must be set aside.

(12) The third charge itself was defective, in that it did not state the date at which it was alleged that the appellant knew or ought to have known the facts alleged. In a developing situation of the kind which arose here, it was necessary for the charge to state at least the date at which the facts were alleged to be known to the appellant.

(13) The committee's finding of guilt on the third charge was perverse because the appellant gave in his evidence a full explanation of what he had done when he had picked up the items relating to payments for renovation costs in the audit papers. In finding him guilty, the committee gave no discernible reason for not accepting his explanation.

(14) The third and sixth charges revolved around the central question of the duties and responsibilities of a company auditor in the audit of a company's accounts. A person practising as an accountant may be subject to certain statutory duties imposed by law under s 207 of the Companies Act (Cap 50, 1985 Ed). In addition, the accountant will have duties and responsibilities which arise from the contractual relationship between him and his client. The contract will record the nature and extent of his work and the standard of performance expected of him. Where the extent of the audit is not described in detail, the nature of his duties and responsibilities as an auditor may have to be resolved by the court, which must then have regard to the circumstances of the particular case and to precedents and accepted standards of current professional practice.

(15) The auditor is not to be written off as a professional 'adder-upper and subtractor'. His vital task is to take care to see that errors are not made, be they errors of computation, or errors of omission or commission, or downright untruths. In common with other professional men, the standard required of an accountant in carrying out an engagement is that of reasonable skill and care of an ordinary skilled man carrying out the same engagement. Some recent authorities have generally recognized the more exacting nature of this standard in the light of modern conditions. The importance of this has been emphasized by considering defaults in the light of the surrounding circumstances, having regard also to professional codes of standards and guidelines and to evidence of general professional practice. In particular, a court which is determining a case must guard against hindsight and only take into account knowledge available to the auditor at the time of default.

(16) The appellant and his firm were up against people who were not only completely unscrupulous but were also highly skilled in covering up their fraudulent activities. So far as the appellant and his firm were concerned, it would not be possible to come to a decision even on their culpability without taking into full account the circumstances in which they were placed. In the court's judgment, it would be unsafe and unsatisfactory to allow the findings on the third and sixth charges to stand, and they must be set aside.

(17) The society has not issued any code of ethics or practice guidelines to its members on conflict of interest, and in their absence, the committee's finding is a clear misdirection to themselves on the law on this point. Whether or not a conflict of interest will arise in any particular case will depend on the nature of the appointments, and the functions required to be carried out under them, and more often than not on the manner in which the functions are to be performed. It would appear therefore that the question of conflict of interest is one of substance and a court must be satisfied in each case that real mischief and real preju-

dice will in all human probability result. There was no evidence at all to support the finding of guilt on the seventh charge, as, apart from the minutes of the first directors' meeting, which appointed the appellant financial controller, there was no other evidence that the appellant had in fact acted in any capacity as a financial consultant.

(18) Domestic tribunals such as this committee, which derive their authority from Parliament, usually have a wide discretion to carry out inquiries in accordance with their own rules of procedure. At every stage, however, they must observe what are commonly regarded as rules of natural justice. An offender brought before a tribunal must not only be given a hearing, but he must also be given a fair hearing. Otherwise the tribunal will be acting ultra vires. The adversarial system of justice necessarily means, in the case of a disciplinary committee of a professional body, that it must approach the issues before it with an open mind. In hearing evidence, a disciplinary committee may seek clarification on points in the evidence which are not clear, but in doing so it must at all times avoid descending into the arena, and joining in the fray. An inescapable impression formed from perusing the transcript is that, in trying to discharge its responsibilities effectively, the committee went well beyond its authority to carry out a 'due inquiry' under the Act, until the inquiry became an inquisition of its own, aimed at securing evidence to justify a finding of guilt. The manner in which the committee went about its inquiry was clearly against the rules of natural justice and was therefore ultra vires, and on this ground alone any finding and sentence by it would have been void.

Cases referred to

1 *Loh Shak Mow* v *PP* [1987] 1 MLJ 362 (refd)
2 *Chew Kia Ngee* v *Singapore Society of Accountants* [1989] 1 MLJ 331 (follid)
3 *Mercer* v *Pharmacy Board of Victoria* [1968] VR 72 (follid)
4 *Felix* v *General Dental Council* [1960] AC 704 (follid)
5 *Re London & General Bank* (No 2) [1895] 2 Ch 673 (follid)
6 *Formento (Sterling Area) Ltd* v *Selsdon Fountain Pen Co Ltd* [1958] 1 All ER 11 (refd)
7 *Re Kingston Cotton Mill Co (No 2)* [1896] 2 Ch 279 (follid)
8 *Calne Gas Co* v *Curtis* (1988) 59 Acct LR 17 (follid)
9 *Re City Equitable Fire Insurance Co Ltd* [1925] 1 Ch 407 (follid)
10 *Rakusen* v *Ellis Munday & Clarke* [1912] 1 Ch 831 (follid)
11 *R* v *Sussex Justices, ex p McCarthy* [1924] 1 KB 256 (follid)

Legislation referred to

Accountants Act (Cap 212, 1970 Ed) ss 34(1)(b), (7), 35(2)
Accountants Act (Cap 2, 1985 Ed) ss 21, 33
Accountants Act 1987 (Cap 2A), 1988 Ed) s 21
Companies Act (Cap 50, 1985 Ed) s 207

M Karthigesu for the appellant.
Harbajan Singh for the respondents.

Cur Adv Vult

Yong Pung How J: The appellant is a public accountant registered under the provisions of the Accountants Acts. In 1981, by which time he had been practising in Singapore for some 15 years, he was practising in partnership under the firm name of Wong & Teo, David Teo and Associates ('the firm'). The firm had two other partners: David Teo, described as the secretarial and tax partner, and also a Madam Poh Lay Eng, described as an audit and tax partner.

On 30 March 1981, the appellant was introduced by Loh Shak Mow ('Loh'), who was the owner of one of the firm's clients, State Carriers & Transportation Pte Ltd, to Lee Kwong Fai ('Lee'). Lee was a gold trader who ran a Hong Kong company, Broadview Finance Ltd, which carried on trading in gold and other commodities in Hong Kong. Lee and Loh were proposing to set up a similar business in Singapore through a new Singapore company. The firm was asked to incorporate the new company and on or about 6 April 1981, the firm was paid $5,000 as a deposit to account of incorporation expenses. The new company, Broadview Commodities Pte Ltd ('Broadview Commodities'), was duly incorporated in Singapore on 20 April 1981 as a private company limited by shares. The incorporation was not done by the firm, however, but by a law firm, Lee & Lee.

The minutes book of Broadview Commodities recorded that the first directors' meeting was held on 27 April 1981. The meeting was not actually held, but was only a 'paper' meeting, and the minutes were prepared by the firm's secretarial section after the appellant was requested by a telephone call to help the new company put up the minutes for the first directors' meeting. The minutes of that meeting recorded that it was resolved, among other things, that the appellant be appointed the company's financial consultant; that the firm be appointed the company's auditors; that Loh and Lee as subscribers be registered as members in respect of the two subscribers' shares of $1 each; and that the allotment of 1,999,998 shares of $1 each equally to Lee and Loh for a cash consideration be approved.

The appellant was the president of the Asean Federation of Accountants in 1981, and on 29 April 1981, he left Singapore for the Philippines to attend a council meeting of the federation. Meanwhile, Broadview Commodities had applied to the Gold Exchange of Singapore Pte Ltd ('GES') for registration as a local associate member. For this purpose, the GES required Broadview Commodities to provide confirmation from its auditors that the company had at least $1m in paid-up capital. Probably on 30 April 1981, but after the appellant had left Singapore for the Philippines, the Broadview Commodities directors saw David Teo to get the firm to provide the necessary confirmation to the GES. They showed him documents purporting to show that Broadview Commodities had $2m paid-up capital. This included payments that Lee had made to Broadview Finance Limited in Hong Kong for and on behalf of Broadview Commodities of sums amounting to HK$3.6m, equivalent to some $1.44m. They were said to be margin deposits which were paid in preparation for gold trading by Broadview Commodities with Broadview Finance Limited. These payments were

evidenced by five margin receipts issued by Broadview Finance Ltd to Broadview Commodities which were then held in Hong Kong. A letter providing the required confirmation was prepared in readiness by the firm and pre-dated 30 April 1981; but, as Broadview Commodities was a client which was not looked after by him, but by the appellant, David Teo held back the release of the letter to the GES until he could get clearance from the appellant to do so. In particular, he wanted the appellant to check on the five margin receipts held in Hong Kong.

While the appellant was in the Philippines, he received a message about this, and on 2 May 1981, which was a Saturday, he flew from the Philippines to Hong Kong, where he was met by Lee and Loh, and was looked after by them. On the next day, Sunday, 3 May 1981, the appellant visited the offices of Broadview Finance Ltd. He was shown the five margin receipts, and also the relevant entries from 21 to 25 April 1981 in respect of these payments in the customer margin receipt register kept by Broadview Finance Ltd. He accepted the five margin receipts as evidence of part payment by Lee towards the $2m paid-up capital of Broadview Commodities. He thereupon confirmed to David Teo that checks had been made on these five margin receipts, and David Teo then released the letter dated 30 April 1981 to the GES. By this letter, the firm certified to the GES that, according to records produced to it, the authorized share capital of Broadview Commodities was $20m and its issued and fully paid share was $2m. The GES replied on 24 June 1981 that the application of Broadview Commodities for local associate membership had been approved.

Although a resolution had been recorded for the first directors' meeting of Broadview Commodities, appointing the firm as the auditors of the company, nothing more appears to have been done to confirm or activate this relationship until the accounts of Broadview Commodities for the first year of operations were completed in 1982. In August of 1982, the firm accepted the appointment as auditors by a letter dated 23 August 1982 and then carried out the first annual audit of Broadview Commodities for the period from 20 April 1981 to 30 April 1982.

In 1982, the Singapore government authorities investigated the activities of several companies which were trading in spot gold, gold futures and other commodities. One of them was Broadview Commodities, and the investigations resulted in prosecutions against two Broadview Commodities officers, Alan Wong, the chairman, and Loh, which are reported in *Loh Shak Mow* v *PP*.[1] After an eight-week trial, Loh was convicted on six charges of abetment of cheating, by conspiring with others to cheat clients of Broadview Commodities of various sums of money totalling $1.9m. He was also convicted on 14 charges of criminal breach of trust of moneys totalling $1.7m. He was sentenced to terms of imprisonment totalling six years. His appeal against conviction was dismissed, but the sentences were reduced to a total of four years' imprisonment. Alan Wong was convicted on three charges of criminal breach of trust as an agent of various sums of money totalling $93,340 and on one charge of dishonestly retaining stolen property, to wit, moneys amounting to $169,713.17. He was sentenced to terms of imprisonment totalling 12 months. On appeal, the convictions and sentences were quashed.

Arising out of the investigations of Broadview Commodities, a letter of complaint dated 5 June 1986 was sent by the Commercial Crime Division of the Criminal Investigation Department to the Singapore Society of Accountants ('the society'). It summarized the investigations into Broadview Commodities and referred to what it described as the 'deep involvement' of the appellant with Broadview Commodities. It finally expressed the view that in his involvement, he 'had failed to take reasonable care and skill' and 'could not have maintained a position of independence required of an auditor, in order to be objective in forming and expressing his opinion on the accounts of Broadview Commodities'. The complaint was laid before the society's investigation committee, which in turn referred it to the disciplinary committee, which then held an inquiry.

Before the disciplinary committee ('the committee'), the appellant faced seven charges under s 34(1)(b) of the Accountants Act (Cap 212, 1970 Ed) (later renumbered s 33(1)(b) of the Accountants Act (Cap 2, 1985 Ed)) as follows:

First charge:

On or about 2 May 1981, as the auditor of Broadview Commodities Pte Ltd, in the office of Broadview Finance Ltd, Hong Kong, you did accept five margin receipts dated 21, 22, 23, 24 and 25 April 1981 issued by Broadview Finance Ltd to Broadview Commodities Pte Ltd amounting to $1.44m alleged to be a sum paid by one Lee Kwong Fai, a Hong Kong national, to Broadview Finance Ltd on behalf of Broadview Commodities Pte Ltd as a margin deposit for commodity futures trading and also as evidence of part payment by the said Lee Kwong Fai as a shareholder of Broadview Commodities Pte Ltd towards the $2m paid-up share capital of Broadview Commodities Pte Ltd without inquiring further into the circumstances surrounding the purported payments when the following circumstances warranted that a further inquiry was necessary, namely:

(a) the payments were made before the first directors' meeting of Broadview Commodities Pte Ltd on 27 April 1981;

(b) you and the said Kwong Fai attended the first directors' meeting of Broadview Commodities Pte Ltd on 27 April 1981. Lee Kwong Fai did not then disclose such payments having been made by him on behalf of Broadview Commodities Pte Ltd;

(c) the payments were made before the board of directors of Broadview Commodities Pte Ltd resolved on 28 April 1981 to open trading accounts with Broadview Finance

Ltd; before the trading agreement was signed on 28 April 1981, and before actual trading began on 18 May 1981;

(d) the payments of $1.44m by the said Lee Kwong Fai would represent 72% of the paid-up share capital of Broadview Commodities Pte Ltd as against Lee Kwong Fai's 50% shareholding in Broadview Commodities Pte Ltd;

(e) the said Lee Kwong Fai had failed to declare to Broadview Commodities Pte Ltd his interest in Broadview Finance Ltd in accordance with s 156(1) of the Companies Act (Cap 50, 1985 Ed);

and you have thereby committed an act amounting to gross neglect in the performance of your professional duties within the meaning of s 34(1)(b) of the Accountants Act (Cap 212, 1970 Ed).

Second charge:

On or about May 1981, as the auditor of both Broadview Commodities Pte Ltd and State Carriers & Transportation Pte Ltd, you allowed Broadview Commodities Pte Ltd to take over assets of State Carriers & Transportation Pte Ltd which were represented to have a book value of $392,082.25 when you knew or ought to have known that the actual value of the assets taken over was only $8,930.10 and have thereby committed an act amounting to gross neglect in the performance of your professional duties within the meaning of s 34(1)(b) of the Accountants Act (Cap 212, 1970 Ed).

Third charge:

As the auditor of Broadview Commodities Pte Ltd, you have accepted as being a part of the paid-up capital of Broadview Commodities Pte Ltd a sum of $167,917.75 represented to be a sum paid by the said Lee Kwong Fai to third parties for goods supplied and services rendered to Broadview Commodities Pte Ltd when you knew or ought to have known that the sum was overstated by an amount equivalent to $5,400 and that the said Lee Kwong Fai had only paid a sum of $80,067.75 and that $82,450 was paid by Broadview Commodities Pte Ltd itself and have thereby committed an act amounting to gross neglect in the performance of your professional duties within the meaning of s 34(1)(b) of the Accountants Act (Cap 212, 1970 Ed).

Fourth charge:

On or about 30 April 1981, you authorized one David Teo Lan Chua to send a letter from Messrs Wong & Teo and David Teo & Associates to the Gold Exchange Ltd, Singapore, dated 30 April 1981 which stated that the fully paid-up capital of Broadview Commodities Pte Ltd was $2m so as to induce the Gold Exchange Ltd, Singapore, to register Broadview Commodities Pte Ltd as a local account member when you knew or ought to have known that in fact the fully paid-up capital of Broadview Commodities Pte Ltd was only $95,188 and have thereby committed an act amounting to grave impropriety in a professional respect within the meaning of s 34(1)(b) of the Accountants Act (Cap 212, 1970 Ed).

Fifth charge:

On or about 9 December 1981, as the auditor of Broadview Commodities Pte Ltd, you allowed a copy of that same letter dated 30 April 1981 which you had authorized to be sent to the Gold Exchange Ltd, Singapore, to be sent to the Comptroller of Immigration so as to induce the comptroller to issue an employment pass for one Ngai Yim Kwok, a Hong Kong national, and have thereby committed an act amounting to grave impropriety in a professional respect within the meaning of s 34(1)(b) of the Accountants Act (Cap 212, 1970 Ed).

Sixth charge:

On or about 30 April 1982, as auditor of Broadview Commodities Pte Ltd, you allowed to be stated in the balance sheet of Broadview Commodities Pte Ltd as at 30 April 1982 that the paid-up share capital of Broadview Commodities Pte Ltd was $2m when you knew or ought to have known that in fact the paid-up capital of Broadview Commodities Pte Ltd amounted to only $95,188 and therefore, did not show a true and fair view of the state of affairs and of the results of Broadview Commodities Pte Ltd and have thereby committed an act amounting to grave impropriety in a professional respect within the meaning of s 34(1)(b) of the Accountants Act (Cap 212, 1970 Ed).

Seventh charge:

On or about 27 April 1981, by accepting the appointment of financial consultant to Broadview Commodities Pte Ltd, and by accepting the appointment of Messrs Wong & Teo and David Teo & Associates, the firm in which you are practising as a public accountant, as the auditors of Broadview Commodities Pte Ltd, you have placed yourself in a position of conflict between your duties as a financial consultant to Broadview Commodities Pte Ltd and your duties as the auditor of Broadview Commodities Pte Ltd and have thereby committed an act discreditable to an accountant within the meaning of s 34(1)(b) of the Accountants Act (Cap 212, 1970 Ed).

All the seven charges were in respect of acts which were alleged to amount to either grave impropriety, or gross neglect, or to an act discreditable to an accountant, under s 34(1)(b) of the Accountants Act (Cap 212, 1970 Ed) ('the Act') which reads as follows:

> If any member of the society —
>
> (b) is judged by the Disciplinary Committee to have been guilty of grave impropriety or infamous conduct in a professional respect or to have been guilty of gross carelessness or gross neglect or gross incapacity in the performance of his professional duties or to have been guilty of any act or default discreditable to an accountant or to have conducted himself in such a manner as to render the exercise of the powers of the Disciplinary Committee expedient in the interests of the public or of the Society;
>
> the Disciplinary Committee may if it thinks fit, on the matter being referred to it by the Investigation Committee and after due inquiry has been made in accordance with the rules of the Society, exercise in respect of that member all or any of the disciplinary powers conferred upon it by subsection (3) of this section.

The disciplinary powers conferred by sub-s (3) included power to cause the name of a member of the society to be removed from the register; to suspend a member for any period not exceeding five years; to impose a penalty not exceeding $500; to censure a member; and to order a member to pay to the society the costs and expenses of any inquiry and any investigation.

The inquiry by the committee took place on 7 April 1987 and 4 and 5 May 1987. At the inquiry, the society and

the appellant were each represented by counsel. A legal adviser appointed by the society under s 34(8) of the Act was also present throughout to advise the committee on all matters of law. On 29 September 1987, the committee found against the appellant as follows:

First charge:	Guilty of an act amounting to gross neglect in the performance of his professional duties and ordered to be removed from the Register of Accountants.
Third charge:	Guilty of an act amounting to gross neglect in his performance of the professional duties and ordered to be suspended for a period of three years.
Fourth charge:	Guilty of an act amounting to grave impropriety in a professional respect and ordered to be removed from the Register of Accountants.
Sixth charge:	Guilty of an act amounting to gave impropriety in a professional respect and ordered to be suspended for a period of five years.
Seventh charge:	Guilty of an act discreditable to an accountant and ordered to be suspended for a period of one year.

No orders were made on the second and fifth charges. The suspensions imposed were to run concurrently. The appellant was also ordered to pay to the society the costs and expenses of and incidental to the committee and the investigation committee, such costs and expenses to be determined by the registrar of the society. The appellant has appealed to the High Court against these orders of the committee. By reason of s 34(7) of the Act, the decision of the committee has not taken effect pending the determination of this appeal. Under s 35(2) of the Act, the procedure governing such appeals to the High Court is the same as for appeals to the High Court from the decisions of subordinate courts in civil matters. As in the case of appeals from district courts, this appeal is in the nature of a rehearing.

The Act itself did not define the terms 'grave impropriety', 'gross neglect', and 'discreditable act'; there has also been no judicial interpretation of these terms, unlike the cases under the legislation concerning the professional practice of doctors, which have been on the statute books for much longer, in which there have been decisions in previous years on the acts amounting to infamous conduct in a professional capacity. I was also informed at the hearing by counsel that the society had not issued for the benefit of its members any rules or guidelines as to what acts of default or misconduct would be considered by the society to fall within the scope of this section. This vagueness or lack of clarification about the nature and scope of each of the offences under s 34(1)(b) could not have helped when charges under it had to be framed, to come up later for determination by the committee or by the court. It is of interest in passing to note that s 21 of the new Accountants Act 1987 (Cap 2A, 1988 Ed), which came into operation on 11 February 1989 and repealed the earlier Act, reduces this problem to some extent by limiting it to dealing only with the single default of 'professional misconduct'.

The transcript of proceedings before the committee recorded no discussion on the meaning of each of these terms, and, in coming to its findings on the separate charges and making the resulting orders, the committee also made no attempt in its grounds of decision to explain what it understood the various terms to mean. The implications of these omissions, and their effect on the validity of the committee's findings, will be better realized when it is noted that the committee ordered the appellant to be removed from the register on both the first charge of gross neglect and the fourth charge of grave impropriety; and to suspensions of three years and five years on the third and sixth charges of gross neglect and grave impropriety respectively. In such circumstances, the findings of the committee provide little assistance to a court to which an appeal is made. The court must determine for itself what acts or omissions amounted to professional misconduct which fell within the range of offences set out in the section, and whether on a review of the evidence the appellant was guilty of any of them.

In searching for reported case authority covering complaints under the Act, counsel were only able to refer the court to the solitary recent case of *Chew Kia Ngee* v *Singapore Society of Accountants*.[2] In that case Thean J, in construing the term 'act or default discreditable to an accountant' within the meaning of s 33(1)(b) of the Accountants Act (Cap 2, 1985 Ed), followed the test of discreditable conduct laid down in the Australian case of *Mercer* v *Pharmacy Board of Victoria*,[3] and said at p 337:

> An act or default discreditable to an accountant includes any conduct which would be reasonably regarded by other accountants of good professional competence as calculated to destroy or lower public confidence in that accountant or lower the credit or standing of the accountant in his professional capacity.

It may well be that an act or default which was discreditable to an accountant need not necessarily have arisen out of his professional work as an accountant, but it should nevertheless have been an act which would have brought discredit on him as an accountant or on the profession as a whole. A practical test could have been if reasonable people, on hearing about what he had done, would have said without hesitation that as an accountant he should not have done it.

The conduct, in respect of which the other charges against the appellant were based, must necessarily have arisen out of an accountant's professional life. In this case,

the appellant was charged with 'grave impropriety in a professional respect', and with 'gross neglect in the performance of his professional duties'. As to 'gross neglect', I was referred to the several paragraphs in the various law dictionaries which attempt to explain the similar term 'gross negligence'. It is clear from them that no uniform meaning can be ascribed to these words, and their construction in any particular case must depend on the context in which they appear. The term can mean no more than plain ordinary negligence, as evidenced by a failure to exercise the skill and care which a client has a right to expect from a professional accountant whom he employs, or it may mean very great negligence when the level of skill and care by a professional accountant has fallen very far below the level that any reasonable client would have a right to expect. Applied to the instant case, I am of the opinion that a member of the society would have been guilty of gross neglect in the performance of his professional duties if, having regard to all the surrounding circumstances at the time, he did not exercise the skill and care that a reasonable client would have been entitled to expect of him.

As to the term 'grave impropriety in a professional respect', I was not referred to any helpful authorities on it. In s 34 of the Act, grave impropriety was ranked together with infamous conduct, and both were clearly considered to refer to misconduct of a more serious nature than gross carelessness or gross neglect. The term 'infamous conduct' has itself become somewhat outdated phraseology. Its previous place in the English Medical Act 1956 has been replaced in later Acts by the more contemporary term 'serious professional misconduct'; and, in our own legislation in Singapore, the new Accountants Act 1987 has substituted 'professional misconduct' for the several defaults set out in s 34. An examination of the reported cases on infamous conduct shows that the term has been applied to a broad range of professional misconduct of a serious nature. The cases show, however, that carelessness or negligence in any form is not enough; there must be some moral turpitude or fraud or dishonesty for the conduct complained of to amount to infamous conduct in a professional respect, or such persistent and reckless disregard of duty as could be said to amount to dishonesty: *Felix* v *General Dental Council*.[4] In my opinion, for any member of the society to be guilty of grave impropriety in a professional respect under s 34, there must have been the same element of moral turpitude in the misconduct complained of, to the extent that it would have been regarded without hesitation by other accountants as being so disgraceful that his continued membership of the profession would immediately be called into question. In view of the seriousness of the allegation, the committee carrying out the inquiry would have to apply a high standard of proof and not arrive at a finding of guilt merely on a balance of probabilities.

An examination of the factual basis of the five charges on which the appellant was found guilty shows that they may be appropriately considered in three separate categories. The first charge concerned the appellant's acceptance, on 3 May 1981, without further inquiry, of five margin receipts amounting to $1.44m as margin deposits for commodity futures trading and also as evidence of part payment by Lee towards the $2m share capital of Broadview Commodities. The fourth charge concerned his subsequently authorizing his partner, David Teo, to sign and release the letter to the GES dated 30 April 1989 stating that the paid-up capital of Broadview Commodities was $2m. These two charges were related charges, both of which arose from the request by Broadview Commodities for a letter to the GES; they were based on the same facts, and could appropriately be dealt with together.

The third charge concerned the firm's acceptance, during the 1982 audit of Broadview Commodities, that part of its paid-up capital amounting to $167,915.75 represented sums paid by Lee to third parties for goods supplied and services rendered to Broadview Commodities; in fact, the sum was overstated by $5,400; Lee had only paid $80,067.75 and $82,450 was paid by Broadview Commodities itself. The sixth charge concerned the firm's statement in the audited balance sheet of Broadview Commodities as at 30 April 1982 that the paid-up capital was $2m when it was only $95,188. Both of these charges arose from the subsequent investigation of the audit; they were based on the same set of facts and were therefore related charges which could also appropriately be dealt with together. The seventh charge of course stood on its own, being based on an allegation of a conflict of interests.

The first charge

On the first charge, the committee found that, by the firm's letter to the GES dated 30 April 1981 certifying that Broadview Commodities had a paid-up capital of $2m, the firm had accepted appointment as auditors of the company. Thus the appellant, as a partner of the firm, had failed in his duty as an auditor when he accepted the five margin receipts as evidence of part payments by Lee, without enquiring further, when enquiry was warranted by the circumstances listed (a) to (e) in the charge. Additionally, the committee found that, although the minutes of the first directors' meeting on 27 April 1981 prepared by the firm had included a resolution approving the allotment of 1,999,998 shares of $1 each equally to Lee and Loh for cash consideration, a later audit paper prepared in September 1982 by the firm had shown that the allotment had not been for cash. The committee stated, in support of its findings, that it had considered very carefully the duties of an auditor as set out in s 207 of the Companies Act (Cap 50, 1985 Ed). The committee found the appel-

lant guilty of gross neglect in the performance of his professional duties and ordered that he be removed from the register.

As to the first charge, it is clear that, at the time in late April and early May 1981, when the appellant made his visit to Hong Kong, and his firm sent the letter dated 30 April 1981 to the GES, neither the appellant nor his firm could be regarded as being the auditors of Broadview Commodities. The appointment as auditors of Broadview Commodities and the contractual relationship as auditor with the company did not arise from the resolution at the first directors' meeting of Broadview Commodities. Neither could the firm's letter to the GES dated 30 April 1981 be evidence that the contractual relationship as auditor had begun. That was to come later in 1982 when the first accounts of Broadview Commodities were made available for audit, and the firm then accepted the appointment as auditors on or about 23 August 1982. In April and May 1981, the firm merely had a limited assignment to certify as accountants to the GES that Broadview Commodities, which had only just been formed, had the paid-up capital of $2m in connection with its application for membership of the GES as a local account member. For this limited assignment, s 207 of the Companies Act (Cap 50, 1985 Ed), referred to by the committee, had nothing to do with the matter; the action is concerned only with the powers and duties of an auditor in its report to the members of a company on the accounts to be laid before the company in general meeting.

Even if I am wrong in finding that neither the appellant nor his firm had accepted appointment as auditors when he visited Broadview Finance Ltd in Hong Kong on Sunday 3 May 1981, his culpability or otherwise must be looked at objectively, taking the situation and circumstances as they were on 3 May 1981. In finding the appellant guilty of the first charge, the committee did not explain how or why the circumstances (a) to (e) in their findings should have put the appellant on inquiry on 3 May 1981 when he accepted the five margin receipts. The committee had also added a further circumstance (f), that the firm's own audit working paper showed that shares allotted to Lee at the first directors meeting were not issued for cash, but this overlooked the fact that the audit working paper was done one-and-a-half years later in September 1982. The committee appeared to have been influenced by its belief that the appellant was closely associated with Broadview Commodities, but this was not supported by the evidence. In fact, these six circumstances, even collectively, need not have raised any doubts at the time, so far as the existence and authenticity of these five margin receipts were concerned.

It has to be borne in mind that at that time these clients were a group of people to whom the appellant had been introduced for business, who to all appearances had an established commodities business in Hong Kong and who had just come into Singapore only a few days earlier to establish a similar business. There was no reason at that time to suspect them for what they were much later discovered to be. While the appellant was away from Singapore, they had approached his partner, David Teo, to certify that Broadview Commodities had $2m paid-up capital, and they had produced to him documents which showed that there was this capital. The major part of it was represented by the $1.44m in margin deposits with Broadview Finance Ltd in Hong Kong, and David Teo wanted their existence and authenticity to be checked. At the request of his partner, the appellant had taken the trouble to go on to Hong Kong from the Philippines before returning to Singapore, to check on the existence and authenticity of the margin deposits which were said to be evidence of the major part of the capital, and this he had done. In addition to inspecting the margin receipt certificates, he had inspected the entries in the customer margin receipt register of Broadview Finance Ltd. There was no reason then to go behind the margin receipts. In my judgment, without the benefit of hindsight and the better knowledge that would have come with it, it would not have been unreasonable for an accountant to act in the way that the appellant did in Hong Kong. The committee's finding on the first charge of gross neglect in the performance of professional duties was perverse and the finding must be set aside.

The fourth charge

The fourth charge of grave impropriety in a professional respect was related to the first charge, and was based on the same sequence of events and facts in April and May 1981. It is not clear why a part of the sequence should have been used to support a charge of gross neglect, and another part to support a different charge of grave impropriety. The crux of the fourth charge was that the appellant authorized his partner to release a letter dated 30 April 1981 to the GES stating that the fully paid capital of Broadview Commodities was $2m, when he knew or ought to have known that the fully paid capital was only $95,188. In its grounds of decision, the committee gave considerable weight to what is referred to as admissions, without setting out what these were, which had been made by the appellant to Chai Yong Seng, an officer of the Commercial Crime Division. Presumably this implied that the appellant had admitted to Chai Yong Seng at some time during his several interrogations that he had already known that the paid-up capital of Broadview Commodities was only $95,188 when he advised David Teo to release the letter to the GES dated 30 April 1981. The transcript of evidence, however, showed no such admissions. In fact, the evidence of both Chai Yong Seng and Henry Soh, a Deputy Superintendent of Police who was attached at the time to the Commercial Crime Division and was also called by the society as a witness, showed that it was not until the

morning of 13 November 1984, when certain documents were shown to him by the police investigators, that the appellant first knew that the paid-up capital of Broadview Commodities was only $95,188. These documents had been unearthed through a prolonged police investigation into Broadview Commodities and there was no way by which the information in them could have been known to the appellant in April 1981.

What was required from the firm in April 1981 was confirmation that the issued capital was paid up. The minutes of the first directors' meeting on 27 April 1981 showed an allotment for cash, but not payment. The transcript of evidence before the committee showed that some considerable discussion took place over whether the shares in question had in fact been allotted for cash. Counsel for the appellant referred to *Pennington's Company Law* (5th Ed) at p 163 and argued that shares are allotted for cash, not only when they are paid for by legal tender or by cheque or by negotiable instrument on which the company may sue, but also when the company is indebted to shareholders and they agree that the debt shall be discharged by crediting shares which are paid up by an equivalent amount. In this case, when the firm was asked to confirm that the $2m had been paid up, it was entitled on the invitation of the shareholders to look at the evidence of the margin receipts, and the goods supplied and services rendered to Broadview Commodities, to satisfy itself prima facie that there was this consideration. There being nothing suspicious at the time, the firm was not required to go behind the margin receipts and the debts due to Loh. The confirmation was asked for within ten days of the incorporation of Broadview Commodities. There had not been an audit, and indeed there could not have been one.

On this fourth charge, the committee appeared from its grounds of decision to have been also unduly influenced by the fact that the letter to the GES by David Teo had been dated 30 April 1981, and another letter by the lawyers Lee & Lee, enclosing a copy of David Teo's letter, had been dated 2 May 1981. The evidence showed, however, that both David Teo and the lawyers were being pressed to provide the required letters and David Teo prepared his in readiness and pre-dated it. The correct inference to draw from the evidence on this aspect is that both letters were not released until confirmation had been received from the appellant in Hong Kong. In the result, the committee stated in its grounds of decision that in respect of this charge, 'we find the defendant's conduct highly suspect', and followed this with a finding of guilt on the fourth charge of grave impropriety in a professional respect, for which it ordered his removal from the register. It need hardly be said that conduct which is highly suspect is not a basis at all for finding a man guilty under our legal system. Nor is it justifiable in the case of a professional man to use it as a basis to order that his livelihood be terminated. Accordingly, the committee's finding of guilt must be set aside.

The third and sixth charges

The third and sixth charges were also related, being based on the events and circumstances of the audit of Broadview Commodities' accounts for the year ended 30 April 1982. In essence, it was alleged by these two charges that as the auditor, the appellant allowed to be stated in the balance sheet that the paid-up capital of Broadview Commodities as at 30 April 1982 was $2m when he knew or should have known that it was only $95,188 (sixth charge); and this was caused partly by his accepting as part of the paid-up capital a sum of $167,915.75 representing sums paid by Lee to third parties for goods supplied and services rendered to Broadview Commodities when the appellant knew or should have known that this was overstated by $5,400 (third charge). On the third charge, the committee found the appellant guilty of gross neglect and ordered a suspension of three years; on the sixth charge, the committee found the appellant guilty of grave impropriety and ordered a suspension of five years.

On the sixth charge, evidence was given, first, by Chan Fook Chuan, an accountant with the Commercial Crime Division. He had been instructed, in July 1984, to verify the paid-up capital of Broadview Commodities and subsequently submitted a report which was produced and admitted in evidence. According to his evidence, the audit working papers prepared by the firm on 27 April 1982 that the paid-up capital of Broadview Commodities of $2m could be grouped into three categories:

(a) payments to Broadview Finance Ltd in Hong Kong by Lee on behalf of Broadview Commodities as margin deposits for commodities futures trading — $1,440,000;

(b) value of assets transferred by Loh from State Carriers and Transportation Pte Ltd ('State Carriers') to Broadview Commodities — $392,082.25;

(c) other payments to third parties by Lee for goods supplied and services rendered to Broadview Commodities — $167,917.97, totalling $2,000,000.

The paid-up capital of Broadview Commodities, however, was nothing like $2,000,000. The purported payments of $1,440,000 to Broadview Finance Ltd as margin deposits in preparation for gold trading by Broadview Commodities had never been made; the value of the assets transferred by Loh from State Carriers was not $392,082.25 but had been grossly inflated from its real value of $15,120.10; and the other payments to third parties by Lee for goods and services to Broadview Commodities did not amount to $167,917.97 but only to $80,067.75. In fact, there had been a massive fraud by Lee and Loh from the outset, and the total paid-up capital of Broadview Commodities was only $95,188. As all this

information had been obtained by them from the records of State Carriers, the stand of the Commercial Crime Division was that the appellant should have remembered the information which was available in the records of State Carriers because his firm had been the auditors of that company.

A second witness who gave evidence on this charge was Chai Yong Seng, another officer then with the Commercial Crime Division. He had only been partly involved with the investigation for four or five days, but, in the course of this period, he had taken part in the interrogation of the appellant. His evidence appeared to have been an important factor in the committee's decision, because the committee noted in its grounds of decision that, on 13 November 1984, in the course of his interrogation, the appellant had admitted to him that the capital of Broadview Commodities was only $95,188. What the appellant was actually shown in the transcript of evidence to have admitted in his interrogation, however, was merely that 'in view of the documents I have seen this morning, the paid-up capital is definitely less than $2m'. The morning in question was 13 November 1984 when, in the course of his interrogation by the Commercial Crime Division, he had been shown further additional documents. He had also said then that he would not have given an opinion that the audited accounts of Broadview Commodities for the period 20 April 1981 to 30 April 1982 showed a true and fair view of the state of affairs of the company as at 30 April 1982 had he known all such facts.

The third charge related in fact to one of the three component items of the sixth charge, namely, the $167,917.25 which had been represented to be a sum paid by Lee to various third parties for goods supplied and services rendered to Broadview Commodities. It alleged that the appellant knew or ought to have known, first, that the total sum was overstated by $5,400; second, that Lee had actually paid only $80,065.75; and third, that Broadview Commodities itself had paid the remaining $82,450. The charge itself was defective, in that it did not state the date at which it was alleged that the appellant knew or ought to have known the facts alleged. In a developing situation of the kind which arose here, it was necessary for the charge to state at least the date at which the facts were alleged to be known to the appellant. Without this information, it would not have been possible for the appellant to prepare a proper defence; its absence was therefore a fatal flaw in the charge, and on this alone the finding of the committee on this charge must be set aside. Notwithstanding this, however, it would be helpful, in view of its relationship to the sixth charge, if I commented on the evidence on this charge.

The only evidence on this third charge was provided again by Chan Fook Chuan. His evidence on this was that a sum of $70,000 was shown in the accounts of Broadview Commodities as a payment to Whye Wah Construction Co for renovation costs. The correct amount was in fact $64,600. The capital account of Broadview Commodities should have been reduced by debiting it with $5,400. Instead of doing so, Broadview Commodities had debited Lee's account and credited the office management account with $5,400 leaving the capital account intact. In its grounds of decision for finding the appellant guilty on the charge, the committee held that the appellant should have been put on notice by the audit papers but in the event had failed to do so. This finding was perverse because the appellant gave in his evidence a full explanation of what he had done when he had picked up these items in the audit papers, and he explained the matter again later when he was cross-questioned on it at length by a member of the committee. In finding him guilty, the committee gave no discernible reason for not accepting his explanation.

The third and sixth charges revolved around the central question of the duties and responsibilities of a company auditor in the audit of a company's accounts. In the first place, a person practising as an accountant may be subject to certain statutory duties imposed by law. A prime example of this is when the accountant carries out a company audit; in such a case, s 207 of the Companies Act (Cap 50, 1985 Ed), referred to in the committee's grounds of decision, sets out his principal duty to make a report to members on the accounts examined by him, and on every balance sheet, every profit and loss account and, where applicable, all group accounts laid before the company in general meeting, and it also sets out what the report must state. At the same time, in addition to these statutory duties imposed by law, the accountant will have duties and responsibilities which arise from the contractual relationship between him and his client. The contract will record the nature and extent of his work and the standard of performance expected of him. Where, as in the instant case of the audit of Broadview Commodities, the extent of the audit is not described in detail, the nature of his duties and responsibilities as an auditor may have to be resolved by the court, which must then have regard to the circumstances of the particular case and to precedents and accepted standards of current professional practice.

What is still regarded as the classic statement of an auditor's function is that by Lindley LJ in *Re London & General Bank (No 2)*[5] at p 682 which over the years has been referred to with approval in many cases:

> It is no part of an auditor's duty to give advice, either to directors or shareholders, as to what they ought to do. An auditor has nothing to do with the prudence or imprudence of making loans with or without security. It is nothing to him whether the business of a company is being conducted prudently or imprudently, profitably or unprofitably. It is nothing to him whether dividends are properly or improperly declared, provided that he discharges his own duty to the shareholders. His business is to ascertain and state the true financial position of the company at the time of the audit, and

his duty is confined to that. But then comes the question: How is he to ascertain that position? The answer is, by examining the books of the company. But he does not discharge his duty by doing this without inquiry and without taking any trouble to see that the books themselves show the company's true position. He must take reasonable care to ascertain that they do so. Unless he does this, his audit would be worse than an idle farce. Assuming the books to be so kept as to show the true position of a company, the auditor has to frame a balance sheet showing that position according to the books and to certify that the balance sheet presented is correct in that sense. But, his first duty is to examine the books, not merely for the purpose of ascertaining what they do show, but also for the purpose of satisfying himself that they show the true financial position of the company.

In a more recent case, *Fomento (Sterling Area) Ltd* v *Selsdon Fountain Pen Co Ltd*,[6] Lord Denning described an auditor's function at p 23:

> What is the proper function of an auditor? It is said that he is bound only to verify the sum, the arithmetical conclusion, by reference to the books and all necessary vouching material and oral explanations, and that it is no part of his function to inquire whether an article is covered by patents or not. I think this is too narrow a view. An auditor is not to be confined to the mechanics of checking vouchers and making arithmetic computations. He is not to be written off as a professional 'adder-upper and subtractor'. His vital task is to take care to see that errors are not made, be they errors of computation, or errors of omission or commission, or downright untruths.

What then is the standard of skill and care which an accountant must exercise in the discharge of his duties? A modern textbook, *Professional Negligence* by Rupert M Jackson and John L Powell, which was referred to by counsel, defines it as a standard of reasonableness. 'In common with other professional men, the standard required of an accountant in carrying out an engagement is that of the reasonable skill and care of an ordinary skilled man carrying out the same engagement.' In the case of an auditor, the duty to exercise reasonable care and skill was stated in two classic statements which have been quoted extensively whenever it has been necessary to determine the extent of an auditing engagement. In *Re London & General Bank (No 2)*,[5] Lindley LJ said at p 683:

> An auditor, however, is not bound to do more than exercise reasonable care and skill in making inquiries and investigations. He is not an insurer; he does not guarantee that the books do correctly show the true position of the company's affairs; he does not even guarantee that his balance sheet is accurate according to the books of the company. If he did, he would be responsible for error on his part, even if he were himself deceived without any want of reasonable care on his part, say, by the fraudulent concealment of a book from him. His obligation is not so onerous as this. Such I take to be the duty of the auditor: he must be honest, he must not certify what he does not believe to be true, and he must take reasonable care and skill before he believes that what he certifies is true. What is reasonable care in any particular case must depend upon the circumstances of that case. Where there is nothing to excite suspicion, very little inquiry will be reasonably sufficient, and in practice I believe business men select a few cases at haphazard, see that they are right, and assume that others like them are correct also. Where suspicion is aroused, more care is obviously necessary; but, still, an auditor is not bound to exercise more than reasonable care and skill, even in a case of suspicion, and he is perfectly justified in acting on the opinion of an expert where special knowledge is required.

In *Re Kingston Cotton Mill Co (No 2)*,[7] Lopes LJ said at pp 288-289:

> But in determining whether any misfeasance or breach of duty has been committed, it is essential to consider what the duties of an auditor are. They are very fully described in *Re London & General Bank (No 2)* [1895] 2 Ch 673, to which judgment I was a party. Shortly they may be stated thus: It is the duty of an auditor to bring to bear on the work he has to perform that skill, care, and caution which a reasonably competent, careful, and cautious auditor would use. What is reasonable skill, care, and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound. He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest, and to rely upon their representations, provided he takes reasonable care. If there is anything calculated to excite suspicion he should probe it to the bottom; but in the absence of anything of that kind, he is only bound to be reasonably cautious and careful.

In the same case, Lopes LJ said at p 284:

> I protest, however, against the notion that an auditor is bound to be suspicious as distinguished from reasonably careful. To substitute the one expression for the other may easily lead to serious error.

Thus, in *Calne Gas Co* v *Curtis*,[8] which was referred to me by counsel, a company auditor failed to discover in the course of his audit of the company's accounts that frauds had been perpetrated by a manager of a company. In deciding against the company's claim against the auditor for negligence, Salter J found that the auditor had brought to bear 'at least a fair and average standard of efficiency and care and that the evidence established that he did not fall below a fair average of competence and ability'.

While reasonable care and skill as first laid down in these 19th century cases still remains the standard required of an auditor, some recent authorities have generally recognized the more exacting nature of this standard in the light of modern day conditions. The importance of this has been emphasized by considering defaults in the light of the surrounding circumstances, having regard also to professional codes of standards and guidelines and to evidence of general professional practice. In particular, a court which is determining a case must guard against hindsight and only take into account knowledge available to the auditor at the time of default. See *Re City Equitable Fire Insurance Co Ltd*[9] in which Pollock MR said in a passage at pp 506-507:

> I will mention another matter. There were these so-called 'window-dressing' schemes. Here I think one has to be very careful, because at the end of each year, the auditor would

discover what had happened down to 28 February, the date at which the accounts closed, but he would not necessarily know what had happened in that part of the subsequent year during which he was making up the balance sheet, or rather conducting the audit. It is true that if you take the three balance sheets together and cast them in the form of a chart, you can see that an increasing amount of window-dressing was going on, and on the chart you will find that there is a rise in the figures which are manipulated for the purpose of window-dressing and therefore it is easy to read a danger signal from such a chart. No such chart was available to Mr Lepine, and we have to take the books singly which were before him and the books, be it remembered, of the City Equitable Co only. It is not right to treat the evidence which is now before us and its significance as being plain in the years 1919, 1920 and 1921 to Mr Lepine.

In determining whether there has been a breach by an auditor of the duty of reasonable skill and care, the court must therefore have regard to the overall background and circumstances in which the alleged breach occurred. In the present case, the appellant and his firm had the great misfortune to become involved with people who were not only dishonest but had the ability and means to carry out their fraudulent activities with great efficiency. The following extracts from the facts set out in Chua J's judgment in *Loh Shak Mow* v *PP*[1] illustrate this ('BVC' referring to Broadview Commodities):

> In August 1982, Loh obtained information that the Monetary Authority of Singapore (MAS) was about to raid the offices of BVC and was at least going to check BVC's accounts. Loh then instructed the staff of BVC to photocopy all important accounts and trading documents, including clients' ledger cards, trading balance sheets, daily business reports and record of clients' effective margins. This enabled BVC to continue with operations despite the fact that the MAS had carted away all its books and records when BVC's office was raided on 29 September 1982.
>
> Loh also requested Lee to come to Singapore to help him to prepare accounts for the benefit of MAS. Lee arrived in Singapore on 12 August 1982, and met both Loh and Alan Wong. The three of them then discussed how the accounts could be rewritten and irregularities in the keeping of records and books corrected for the benefit of MAS. Sylvia Leung and her sister Eliza Leung were recalled to Singapore from Hong Kong to supervise the rewriting of the account books of BVC. They were responsible for preparing false trading statements to give the impression that actual trading had taken place between BVC and BVF.
>
> There was wilful destruction of evidence to prevent the MAS from discovering the offences of cheating and criminal breach of trust committed by the directors of BVC. Telexes and investment ledger cards were destroyed; accounting books and documents including general ledgers and investment ledger cards were rewritten; payment vouchers and margin receipts were falsified; company resolutions were invented. Alan Wong signed two of these resolutions dated 13 April 1982 and 16 April 1982.
>
> The result was that the MAS raid did not result in the discovery of either the defalcations of Loh and Alan Wong or the bucketing of clients' orders. The accounts and supporting documents had been so prepared that on the surface they appeared to have been properly kept. On the instruction of Loh, the BVC staff did not reveal the truth as to the trading operations of BVC to the MAS investigators.

It is not in dispute that Lee and Loh were engaged from the beginning in a massive fraud. The fact of the matter is that the appellant and his firm were up against people who were not only completely unscrupulous but were also highly skilled in covering up their fraudulent activities. They were able to completely rewrite their account books, and for a long time to almost frustrate the entire investigating machinery of the MAS. It was only after a long and painstaking investigation, with all the resources of the Commercial Crime Division and with Lee turning state witness, that the details of the fraud were uncovered. So far as the appellant and his firm were concerned, it would not be possible to come to a decision even on their culpability without taking into full account the circumstances in which they were placed. In my judgment, it would be unsafe and unsatisfactory to allow the findings on the third and sixth charges to stand, and they must be set aside.

The seventh charge

The seventh charge was that on or about 27 April 1981, the appellant accepted the appointment of financial consultant to Broadview Commodities, and at the same time also accepted the appointment of his firm as the auditors of Broadview Commodities; by doing so he placed himself in a position of conflict between his duties as a financial consultant and his duties as auditor, thereby committing an act which was discreditable to an accountant. He was found guilty by the committee and was ordered to be suspended for a period of one year.

It is not easy to understand from the transcript of evidence what this charge was all about. It arose from the minutes of the first directors' meeting of Broadview Commodities on 27 April 1981 which recorded resolutions appointing the appellant as financial consultant and his firm as auditors. On the assumption that the resolutions in these minutes in fact constituted valid appointments, a weak and hesitant opinion was expressed by Chan Fook Chuan in his examination-in-chief that such an action might not be in order, as some sort of conflict could arise. When he was examined later, he agreed that his opinion had been expressed on the basis that, before acting as the auditor, the appellant had acted as the financial consultant; if he had not so acted as financial consultant, he thought there would be no conflict of interest. This was the entire evidence against the appellant on this charge.

Apart from the minutes, there was no other evidence that Broadview Commodities had acted further on the resolution, or that the appellant had in fact taken up the appointment as financial consultant, or had ever acted in any capacity as a financial consultant. This was

confirmed by the appellant's own evidence before the committee, when he explained that there had been no follow-up action on this item and it had been conveniently forgotten. Nevertheless, the committee found the appellant guilty on this charge, and explained its finding as follows:

> It is no good to say that in fact no consultancy services were rendered. Nor is it sufficient to say that the company took no steps to rescind the appointment. The defendant ought to have refused the appointment or to resign the office immediately thereafter. This he had failed to do.

I was informed by both counsel that the society has not issued any code of ethics or practice guidelines to its members on this subject, and in their absence, the committee's finding is a clear misdirection to themselves on the law on this point. It must be remembered that the nature and scope of the functions which are exercised by accountants have changed and grown over the years. This development has been well summarized by Jackson and Powell at p 388:

> From its 19th century development and recognition as a profession concerned primarily with book-keeping and the preparation and investigation of accounts, accountancy has progressed to embrace a wide range of functions. Apart from the preparation and investigation of accounts, including the important audit function, the range covers extensive and advisory, reporting and administrative functions. The advisory function includes most notably taxation matters but may also include particular business problems such as structures, managerial efficiency and takeovers and mergers. The administrative function includes administering trusts or settlements and receiverships and liquidations, although clearly a proper discharge of that function will entail a considerable advisory and reporting element. The proliferation of tasks performed by accountants has necessarily resulted in specialization. While an individual practitioner may be competent to deal with a wide range of functions, commonly performed by accountants, very rarely will he be sufficiently competent to deal with them all.

In such circumstances, whether or not a conflict of interest will arise in any particular case will depend on the nature of the appointments, and the functions required to be carried out under them, and more often than not on the manner in which the functions are to be performed. For auditors, some of the problems are further described by R Baxt in an often quoted article in (1970) 33 MLR 413 at p 416:

> Further complications flow from the possibility that the auditor or firm of auditors may also be the management consultants to the company. No doubt the failure of certain advice given in this capacity will not be one of the items the auditor would wish to note in his report. It is quite clear that the auditor should not be concerned in his capacity as auditor with this aspect of the company's activities, but the lucrative contract which usually accompanies the appointment as managerial consultants may be too much an inducement to allow for a completely unbiased approach to the audit, especially where the issue of a qualified report may lead to the directors refusing to renew the appointment as managerial consultants and influencing, as they can so easily do in most cases, the appointment of another firm of auditors by the company. In addition, it is common for the auditor upon his 'retirement' to be appointed a director of the company — this 'perk' may also be lost.

A clear statement of the law regarding conflicts of interests in the case of solicitors, which could be of relevance for accountants, was stated by Cozens-Hardy MR in the Court of Appeal case of *Rakusen* v *Ellis Munday & Clarke*[10] at p 835:

> I do not doubt for a moment that the circumstances may be such that a solicitor ought not to be allowed to put himself in such a position that, human nature being what it is, he cannot clear his mind from the information which he has confidentially obtained from his former client; but in my view we must treat each of these cases, not as a matter of form, not as a matter to be decided on the mere proof of a former acting for a client, but as a matter of substance, before we allow the special jurisdiction over solicitors to be invoked, we must be satisfied that real mischief and real prejudice will in all human probability result if the solicitor is allowed to act.

It would appear therefore that the question of conflict of interest is one of substance and a court must be satisfied in each case that real mischief and real prejudice will in all human probability result. In this case, there was no evidence at all to support the finding of guilt on the seventh charge. The finding therefore cannot stand and must be set aside.

There is the question of costs. Having regard to all the circumstances, I am of the opinion that each party should bear its own costs before this court and before the committee, and I so order.

I should not finish with this judgment without recording my views on some extremely unsatisfactory aspects of the proceedings before the committee. In his petition of appeal, the appellant had alleged earlier that the committee had conducted its proceedings in a manner which was against the rules of natural justice. Mr Karthigesu referred to this at the hearing before me, but only did so in general terms and preferred to proceed with his appeal on other grounds. Notwithstanding his decision not to press this point, the matter is of such importance for the proper conduct of inquiries by disciplinary bodies that it should not be passed over.

Domestic tribunals such as this, which derive their authority from parliament, usually have a wide discretion to carry out inquiries in accordance with their own rules of procedure. At every stage, however, they must observe what are commonly regarded as rules of natural justice. An offender brought before a tribunal must not only be given a hearing, but he must also be given a fair hearing, so that it can be said, to adopt a much used quotation, that justice has not only been done, but can be seen to have been done: *R* v *Sussex Justices, ex p McCarthy*.[11] In our system of justice the process is adversarial and not inquisitorial. This necessarily means, in the case of a disciplinary

committee of a professional body, that it must approach the issues before it with an open mind, it must also listen to the evidence for and against the offender, and to what he may have to say in his defence; and it must then make up its mind whether, on all the evidence before it, the offender has been proved to be guilty of the offence. In hearing evidence, a disciplinary committee may seek clarification on points in the evidence which are not clear, but in doing so it must at all times avoid descending into the arena, and joining in the fray. In the last instance, it is there to judge as best it can; it is not there to supplement the prosecution. It must remember that, in conferring statutory authority on it, Parliament intended that it will act fairly; if it does not do so, it will be acting ultra vires

I am only too well aware that service on disciplinary committees is a tedious and unwelcome task which professionals try to avoid. This is particularly so in our relatively small community in which there never seem to be enough people able and willing to take on such responsibilities. Neither do I suggest that the committee in this case acted throughout other than in good faith. Nevertheless, in my opinion, the manner in which the proceedings were carried on in this case fell far short of the standard of fairness which would be required to satisfy the rules of natural justice. In particular, an inescapable impression is formed from perusing the transcript that, in trying to discharge its responsibilities effectively, the committee went well beyond its authority to carry out a 'due inquiry' under the Act, until the inquiry became an inquisition of its own, aimed at securing evidence to justify a finding of guilt. The society was represented before the committee by an experienced and competent counsel, but the committee appeared from the transcript at several stages of the proceedings to have been so carried away by its misinterpretation of its own role that it was actually conducting the proceedings on its own. Nor unfortunately was the committee given any legal advice at some critical moments by its legal adviser whom the transcript showed to be strangely mute throughout some remarkable proceedings.

Chai Yong Seng was not a major witness; his examination-in-chief covered over four pages of the transcript, and his cross-examination only two pages, but the questioning of him by the committee went on for 11 pages. The appellant's examination-in-chief, with frequent interruptions by the committee, covered 23 pages; his cross-examination, after about 15 pages of interruptions by the committee, was taken over by the committee itself, which then questioned him for a relentless 30 pages before the committee decided to recall David Teo for an equally harrowing experience. By that time, the committee had apparently parted company with its proper role. Its approach towards its functions was evidenced by some illuminating passages. Towards the close of its questioning of the appellant, these passages appeared:

Mr Tan: Your counsel tells us that we are cross-examining but as far as we are concerned, we ... if the defence ... prosecution ... defence do not bring up the relevant questions, we are going to get to the root of it.

...

Mr Tan: If somebody cannot do his job well, and if I have to do somebody else's job, then I will do it.

When David Teo was recalled, the transcript of his questioning included the following passages:

Mr Tan: Let me warn you, Mr Teo, that by just saying that you don't know, you are not going to escape any potential negligence against you also. This committee can always refer you for investigation if we find that your evidence is not satisfactory. So, please get it correct.

...

Mr Tan: This committee can make a recommendation to find you ... to put you before the IC also. If we find that there is enough evidence that you are also negligent.

...

Mr Tan: So, please tell us. Be careful what you say, okay?
Madam Teo: Try to remember.
Mr Teo: But if I cannot remember, I cannot create something out of the blue, can I?

...

Mr Tan: So you are not telling us fully, you see. Please for your own sake, you better explain to us fully, what was your conversation with him during the time and after he came back, or else you also might be in trouble.
Mr Teo: What trouble? You tell me what other questions I should answer?

...

Mr Tan: Don't 'that and that'. Say exactly. Please.
Mr Teo: I can't remember the exact wordings I said.
Madam Teo: Okay.
Mr Teo: Because we were in the room, because we talked, you know.
Mr Tan: You better remember, otherwise you are going to be in trouble.

...

Mr Tan: If you don't remember, you are going to be in trouble. So you better remember.
Mr Teo: Please do not threaten me all the time.
Mr Tan: I am not threatening you, I am advising you.

...

Mr Teo: I think ...
Mr Tan: I am advising you, Mr Teo.
Mr Teo: But the thing is, you are threatening me, Mr Tan.
Mr Tan: I have no intention to threaten you. I am just advising you.

I have already dealt with the charges on other grounds. I need only add that, in my opinion, the manner in which the committee went about its inquiry was clearly against the rules of natural justice and therefore ultra vires, and on this ground alone any finding and sentence by it would have been void.

Appeal allowed.

Solicitors: *Tan, Rajah & Cheah; Lee & Partners.*

Reported by *Terence Tan Bian Chye*